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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF FREEDOM OF EXPRESSION

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, submitted in accordance with Commission resolution 1999/36

Addendum

Report on the mission to Ireland

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Introduction

1. This report has been prepared pursuant to Commission on Human Rights resolution 1999/36 of 26 April 1999. It presents and analyses information received by Mr. Abid Hussain, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, during his visit to Ireland from 18 to 22 October 1999, as well as information received from individuals and non-governmental organizations concerning matters relating to the right to freedom of opinion and expression.

2. By a letter dated 13 April 1999 addressed to the Permanent Mission of Ireland to the United Nations Office at Geneva, the Special Rapporteur sought the agreement of the Government for a visit to Ireland. On 1 September 1999, the Government of Ireland granted this request.

3. The Special Rapporteur would like to express his gratitude for the cooperation extended to him by the Government of Ireland in discharging his mandate. He highly appreciates the assistance received from the Government in the organization of his visit. He would like to convey his gratitude especially to the Minister for Foreign Affairs and his staff, who helped make this visit successful.

4. During his visit, the Special Rapporteur met with representatives of the Government, Members of Parliament and members of the judiciary. He also met with representatives of non-governmental organizations active in the field of human rights, academics, writers, professionals of the media sector and other members of civil society who were of interest for his mandate.

5. A list of persons with whom the Special Rapporteur met during the visit is included as an annex.

I. BACKGROUND AND CONTEXT

6. Over the previous decades Ireland has witnessed a marked transition from being a highly traditional, agricultural and church-dominated society towards a more modern, secular and service-oriented one. This development is most noticeable in the growth of a highly dynamic information technology sector, particularly in and around Dublin, while the west of Ireland is still more traditional and rural than the rest of the country. Ireland is currently attempting to become the hub of e-commerce in Europe, which will continue to engender profound economic and societal changes. In view of this new prosperity, new challenges are emerging in Ireland such as the arrival of asylum-seekers. Ireland, formerly a country characterized by emigration, appeared unprepared by this new phenomenon.

7. As far as freedom of opinion and expression is concerned, the print media in Ireland is mainly owned by the private sector, with one company, Independent News and Media, largely dominating the market of the Sunday and the provincial newspapers in particular. Some United Kingdom newspapers also publish an Irish version. Cable and satellite television, in addition to state-controlled television, and the broadcasting in Ireland of United Kingdom

programmes, allow a wide possibility of choice. Digital terrestrial television will be soon introduced and regulated under a new Broadcasting Bill, now proceeding at the Oireachtas (Parliament).

II. PRINCIPAL CONSIDERATIONS AND CONCERNS

A. Legal framework

8. In this section, the Special Rapporteur will briefly consider some aspects of the international and national legal framework governing the protection of the right to freedom of opinion and expression in Ireland.

1. International obligations

9. Ireland has accepted a wide range of international obligations in the field of human rights. It is a party to the International Covenant on Civil and Political Rights, including its two Optional Protocols, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child. It has not acceded to the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. International agreements ratified by Ireland are not self-executing and the provisions of the International Covenants on Human Rights cannot be invoked before, or directly enforced by, the courts.

10. Furthermore, Ireland ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1953, as well as the right of individual petition. However, it has not incorporated the Convention into its own law. Ireland is also a participating State of the Organization for Security and Cooperation in Europe (OSCE).

2. National legislation

(a) The Constitution

11. Article 40, paragraph 6.1, of the 1937 Constitution provides for freedom of opinion and expression. It states that "the State guarantees liberty for the exercise of the [...] right of the citizens to express freely their convictions and opinions". This right, however, is "subject to public order and morality".

12. Article 40, paragraph 6.1, also refers to the media, which is defined as "organs of public opinion, such as the radio, the press, the cinema", and recognizes "their rightful liberty of expression, including criticism of Government policy" but forbids their use "to undermine public order or morality or the authority of the State". Also, "The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law."

(b) The Laws regarding the press and other mass media

13. As print media are not subject to a specific statutory regulation, there are other laws which regulate issues strictly related to the press. Among them is the Defamation Act, 1961, according to which newspapers and periodicals accused of libel have to prove that defamatory words employed are true. The Offences Against the State Act, 1939, defines several offences in relation to seditious documents, including documents which contain matter calculated or tending to undermine public order or the authority of the State, or which allege, imply or suggest that the government in power under the Constitution is not the lawful government, or that the military forces maintained under the Constitution are not the lawful military forces of the State. Under the Official Secrets Act, 1963, the State has the power to prosecute unauthorized disclosures of sensitive government information. The law on contempt of court is largely judge-made and it is based on the general principle that the courts have an inherent jurisdiction to ensure that the administration of justice is not obstructed and that courts orders are obeyed.

14. With reference to television and radio, the Department of Arts, Heritage, Gaeltacht and the Islands is responsible for the formulation of national policy relating to the broadcasting and the audiovisual industry. The Broadcasting Act, 1960, creates an authority to be established for the purpose of providing a national television and sound broadcasting service. Radio Telefis Eireann (RTÉ), the Irish national broadcasting organization, is a statutory corporation and it is subject to the nine member RTÉ Authority, appointed by the Government. Amending statutes enacted in 1976 and 1990 modified RTÉ.

15. In order to control private broadcasting, the Radio and Television Act, 1988, established an Independent Radio and Television Commission. This provides for the arrangement of sound broadcasting services in specified areas including a national radio service and a television programme service, in addition to any broadcasting services provided by RTÉ, and it ensures that every independent radio and television contractor complies with the provisions of the 1988 Act, and with the terms of its broadcasting contract with the IRTC. The IRTC is a self-financing agency, drawing its income from advertising levies paid by franchised stations. The 10 Commission members are appointed by the Government and hold office for a period of five years.

16. A new Broadcasting Bill, 1999, is now proceeding at the Oireachtas (Parliament). If passed into law, this bill will provide a structure for the introduction and regulation of digital television services. The bill also provides for the name of the Independent Radio and Television Commission to be changed to the Broadcasting Commission of Ireland. This body will be given expanded powers and functions with regard to the regulation of digital broadcasting when entering into contracts with providers of broadcast content and drawing up codes and rules relating to the broadcast programme material, broadcast advertising and a range of other related matters.

17. With reference to the Internet, the Child Trafficking and Pornography Act, 1998, applies to the material disseminated over the Internet. The Taoiseach (Prime Minister) requested the Minister for Justice, Equality and Law Reform to establish a Working Group on the Illegal and Harmful Use of the Internet. The first report of this Working Group published in July 1998 proposed a package of strategic measures to respond in an appropriate way to the illegal and harmful use of the Internet.

(c) Other legislation and institutions with a direct impact on the exercise of the right to freedom of opinion and expression

18. The Freedom of Information Act, 1997, enables members of the public to obtain access to the greatest extent possible consistent with the public interest and the right to privacy, to information in the possession of public bodies. This Act establishes the post of Information Commissioner, who is appointed by the President, approved by the Parliament and nominated by the Government for a six-year appointment. The Information Commissioner has the power to issue legally binding decisions.

19. The Data Protection Act, 1988, regulates information presented in electronic format. This Act gives effect to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data signed at Strasbourg on 28 January 1981, and regulates in accordance with its provisions the collection, processing, keeping, use and disclosure of certain information relating to individuals that is processed automatically.

20. The following laws regulate censorship and classification of publications, films and videos: the Censorship of Films Acts, 1923, establishes the office of the Official Censor of Films and a Censor of Film Board; the Censorship of Films (Amendment) Act, 1992, provides for the appointment of Assistant Censors to assist the Official Censor in the performance of his or her functions under this legislation; the Censorship of Film (Amendment) Act, 1970, introduced a more liberalized approach in this area. The Video Recordings Act, 1989, regulates the home video sale and rental industry by preventing the commercial importation, sale and distribution of pornographic videos, and certifies and classifies videos.

21. The Censorship of Publications Acts, 1929 to 1967, regulate the area of publication. The Censorship of Publications Act, 1946, provides for a Censorship of Publications Board of five persons appointed by the Minister of Justice and for a similarly appointed Censorship of Publications Appeal Board, whose chairman is to be a judge or a practising barrister or solicitor. The Censorship of Publications Act, 1967, mitigates the severity of the code by placing a 12-year limit on the life of any prohibition order, past and future, made on a book on the ground that it was indecent or obscene.

22. Article 40, paragraph 3.3, of the 1937 Constitution (as amended by the Fourteenth Amendment to the Constitution Act, 1992) and the Regulation of Information (Services outside the State for Termination of Pregnancies) Act, 1995, regulate information about abortion.

23. Under the Good Friday Agreement of 1998, Ireland and the United Kingdom of Great Britain and Northern Ireland decided to establish an independent Human Rights Commission, one in Ireland and one in Northern Ireland which will cooperate together.

According to the new Human Rights Commission Bill, now proceeding at the Oireachtas, the new Commission will be independent of the Government in the performance of its functions. Its tasks will be to keep the adequacy and effectiveness of law and practice in Ireland and to consult international bodies with expertise in the area of human rights, to recommend to the Government measures to further strengthen human rights protection and to promote awareness and understanding of human rights issues. The Commission will also be able to prepare and to publish research and to offer assistance to individuals pursuing human rights cases.

B. Principal observations and concerns

1. The media

24. In order to assess the situation of the right to freedom of opinion and expression in Ireland, the Special Rapporteur met with a large number of media professionals, as well as with members of the journalists' association, the National Union of Journalists (NUJ).

(a) The print media

25. According to information made available to the Special Rapporteur, the Irish newspaper market is broadly divided into two categories: newspapers (both Irish and British titles) which are distributed throughout the country, and newspapers which have a distribution pattern targeted at local readers. Among the newspapers distributed nationally, there are 16 Irish titles and 19 British titles. Among the ones distributed locally, there are over 60 titles. It was brought to the Special Rapporteur's attention that the Irish newspaper market is largely dominated by the Independent News and Media plc Group. The group owns the Irish Independent, which is the morning paper with the largest circulation; the Sunday Independent, the Sunday Tribune and the Sunday World, which are all Sunday newspapers; the Evening Herald, the only national evening newspaper, and more than 50 per cent of the provincial titles throughout the country. The Special Rapporteur was also informed that there is competition caused by imported newspapers from the United Kingdom. These are often sold at a lower price than local newspapers and, according to some sources, tabloids in particular have introduced a lower standard of journalistic ethics into the Irish newspaper market.

26. Although the press in Ireland is independent and free from all controls, the Special Rapporteur was informed of a certain number of issues of concern which deserve particular attention. He was informed that in Ireland there is no explicit legal protection for journalists with regard to their right to protect sources of confidential information.[1] This matter was addressed by the Law Reform Commission in 1994 and by majority they decided not to introduce in Ireland a provision similar to Section 10 of the United Kingdom Contempt of Court Act, 1981,[2] but to leave the question to the courts. It was reported that generally courts try to avoid ordering journalists to reveal sources. Only two journalists have been jailed so far in Ireland for refusing to identify sources: one in the 1930s and one in the early 1970s. More recently, in 1995, Susan O'Keeffe of Granada Television, who made a programme that led the Government to set up a Tribunal of Inquiry on beef processing, was prosecuted for refusing to name her sources to this very Tribunal. She was subsequently acquitted on a technicality.

27. The Special Rapporteur was also informed that the situation concerning this issue has developed since the 1996 Goodwin case,[3] in which the European Court of Human Rights had ruled that constraining journalists to reveal sources was contrary to article 10 of the European Convention on Human Rights,[4] which protects freedom of expression. According to Irish authorities, there is an emerging recognition in the courts that journalists should not be constrained to reveal their sources.

28. Another issue of concern brought up to the Special Rapporteur is regarding civil actions for defamation, which according to the National Union of Journalists and other sources, may seriously inhibit journalism in Ireland. It was reported that newspapers may feel restrained by the high cost of legal proceedings to properly investigate those in power. This issue is described below in paragraphs 41 to 46.

29. The Special Rapporteur was also informed of the implementation of the Freedom of Expression Act, 1997, concerning access to certain public reports. Journalists represented approximately 20 per cent of requesters under this Act. It was reported to the Special Rapporteur that a journalist of the Sunday Tribune newspaper applied on 12 January 1999 to the Office of the Houses of the Oireachtas to receive information relating to expenses claimed by each member of the Oireachtas (in particular travelling, telephone, post, secretarial and office administration) since April 1998. The Office of the Houses of the Oireachtas decided to release the figures of the expenses but not the names of the members of the Oireachtas to whom those expenses were related. When the journalist appealed against this decision, the Information Commissioner decided on 27 July 1999 that the names also should be revealed. Now the information is in the public domain and the Special Rapporteur was told that probably next year it would be published as a matter of course. The Special Rapporteur praised this way of implementing the Freedom of Information Act as this made the Oireachtas more accountable and accessible to the general public.

(b) The broadcast media

30. Broadcasting in Ireland is largely State-controlled but it has no monopolistic position due to the presence of cable and satellite television. The Broadcasting Complaints Commission investigates complaints about programming of both public and private broadcasting.

31. Radio Telefís Éireann is the Irish national broadcasting organization and it is subject to the RTÉ Authority. This body, composed of nine members appointed by the Government, meets monthly and acts as RTÉ's Board, making policy and guiding corporate direction. The RTÉ Executive Board is responsible for the day-to-day running and is chaired by the Director-General. RTÉ is independent in its editorial decisions. Funding comes from television licence income and commercial revenue, which sustains three national television stations, four national radio networks, and one local radio station.

32. The Special Rapporteur was informed that RTÉ has a statutory duty of fairness and impartiality: when the Government's point of view is broadcast, the opposing point of view is broadcast on the same day. It was brought to the Special Rapporteur's attention that further to a High Court judgement in 1998 currently on appeal (the Supreme Court heard the case in October 1999 but reserved its judgement), RTÉ has to divide its party political broadcasts

equally between pro and anti sides in referendum campaigns, after it had been accused of acting unfairly and in breach of its statutory duties under the Broadcasting Acts in its allocation of time for uncontested party political and other broadcasts in various referendums.[5] The only restriction on broadcasting, not applied since 1994, was the one made under Section 31 of the Broadcasting Authority Act, 1960, which is described below in paragraphs 47 to 50. The Special Rapporteur noted with satisfaction that RTÉ had launched in June 1999 a new radio information service for Kosovar refugees in Ireland broadcast in Albanian. The programming includes news, Albanian folk and popular music as well as English lessons.

33. RTÉ's monopoly ended in the 1980s with the emergence of private broadcasting. The Radio and Television Act, 1988, establishes the Independent Radio and Television Commission (IRTC) which has the responsibility of creating, operating, monitoring and developing independent broadcasting in Ireland. According to the new 1999 Broadcasting Bill, the IRTC will be renamed the Broadcasting Commission of Ireland and its role and responsibility will be expanded, particularly in relation to the regulation of new digital services and the responsibility to draw up codes of standards for all broadcasters.

34. The Special Rapporteur noted with interest the development, encouraged by the IRTC, of Community Radio services. A community radio station is owned and controlled by a not-for-profit organization whose structure provides for membership, management, operation and programming primarily by members of the community at large. In this way, the community served can participate at all levels. Its programming should be based on community access and should reflect the special interests and needs of the listeners that a station is licensed to serve. Another project which raised the Special Rapporteur's interest was Women on Air. This project aims at promoting equality of opportunity for women in independent radio broadcasting by training and policy and management initiatives. Also, the advent of digital terrestrial television will create new opportunities for programmes closer to specific matters such as women and minority issues, especially in rural areas of Ireland. The Special Rapporteur hopes that this kind of services can provide a right of access to minority and marginalized groups and promote and protect cultural and linguistic diversity.

(c) New information technologies

35. In 1997, the Government set up a Working Group on the Illegal and Harmful Use of the Internet, composed of representatives from both the public and the private sector. One of the main concerns for the Working Group was to set a balance between ensuring that Ireland can benefit from the enormous advantages that the Internet offers and, at the same time, protecting users, in particular children, from its illegal and harmful use. The Working Group in its first report made a list of illegal uses of the Internet, which can include actions causing injury to children (child pornography, child trafficking); actions causing injury to human dignity (incitement to racial hatred); illegal gambling; infringements of privacy and intellectual property rights; libel; and threats to economic security, information security and national security. According to the Working Group, laws should be applied against illegal uses of the Internet. The interpretation of "harmful" is more subjective and culturally specific. So in cases of "harmful" uses of the Internet, it should be the filtering mechanisms within the technology itself which should examine and reject unsuitable information.

36. The Special Rapporteur noted with satisfaction that the Working Group recommended an approach of non-intervention of the State. Instead, a system of self-regulation should be set up by the Internet service providers in order to tackle these issues. Such a system will include a national public hotline to report illegal use of the Internet on sites maintained by Irish-based Internet service providers, an Advisory Board bringing together the partners needed to ensure successful self-regulation, and the introduction of appropriate awareness measures. The Advisory Board will maintain a close contact with similar groups in Europe due to the global character of Internet.

37. The Child Trafficking and Pornography Act, 1998, is one of the first Irish legislative initiatives to deal with Internet. It creates several offences relating to child pornography. It provides that Internet service providers may be accused either of causing or facilitating the distribution, import or export of child pornography or the storage of such material. However, the Special Rapporteur was informed that it is very difficult for Internet service providers to control what their users access and they may be faced with a choice between prosecution and disconnecting Ireland from the Internet.

2. Other concerns relevant to the promotion and respect for the right to freedom of opinion and expression

(a) The legal restrictions on freedom of expression

(i) Censorship

38. The Special Rapporteur's attention was drawn to the fact that films, videos, books and periodicals in Ireland are subject to censorship. In 1993, the United Nations Human Rights Committee condemned the Irish legislation on this issue and suggested "that steps should be taken to repeal strict laws on censorship and ensure judicial review of decisions taken by the Censorship on Publications Board".[6] Recently, following the In Dublin case, in which a periodical was banned in summer 1999 for advertising massage parlours, it was reported to the Special Rapporteur that the Government will be undertaking a review of Irish censorship laws because they are obsolete. Various sources confirmed to the Special Rapporteur that the Irish censorship regime is characterized by a lack of transparency and accountability.

39. Censorship of films and videos is exercised under the Censorship of Films Act, 1923 to 1992, and the Video Recordings Act, 1989 and 1992. The Official Censor of Films, appointed by the Minister of Justice, must screen and classify all films and videos before they can be sold or shown in Ireland. The Special Rapporteur was informed during a meeting with one of the Assistant Censors that now, however, the focus is more on child protection and on classifying contents in order to allow people greater choice. As concerns movies, in the last years only half a dozen movies were prohibited,[7] generally for reasons of gratuitous violence, such as Natural Born Killers, directed by Oliver Stone. In general, other films which may fall in these categories are either subject to a higher classification or to cuts, for instance, when they show techniques which younger people could imitate copycat-like. With regard to videos, the Official Censor prohibits hard-core pornography. A nine-member Appeal Board, always appointed by the Minister of Justice, reviews appeals to the decisions taken by the Censor within a three-month period.

40. Censorship of publication is regulated by the Censorship of Publications Acts 1929 to 1967. A five-person Censorship of Publications Board appointed by the Minister of Justice examines publications referred to it by a customs officer or a member of the general public, or books on its own initiative. It prohibits the sale and distribution of a book or a periodical if it decides that it is obscene or indecent. The Board meets in private and it is under no obligation to provide reasons for the decisions it takes. The Special Rapporteur was informed that also the procedure for appeals is secret as the Censorship of Publication Appeals Board meets in private. The Censorship of Publication Act, 1967, mitigated the severity of the code by limiting the prohibition order on a book to 12 years. In this way most of the books banned before 1955, when the Board was much more conservative, were circulated again in Ireland.

(ii) Defamation

41. The Special Rapporteur was informed by the National Union of Journalists (NUJ) and other sources that libel actions are seriously inhibiting journalism in Ireland as these cases can create problems for newspapers, in particular the small ones, in terms of loss of money and time. In the Defamation Act, 1961, the burden of proving the publication to be true is on the defendant. Also, there is no defence when a media outlet has published false statements of fact that defame a politician or other public figure, even if the defendant has taken reasonable care to verify that the statement was true and it was reasonable to publish the matter as part of a discussion of a matter of public interest.

42. In December 1991, the Law Reform Commission published a report on the Civil Law of Defamation recommending the repeal of the Defamation Act, 1961, and the enactment of new legislation. Among the recommendations, the Law Reform Commission proposed that "defamation" should be defined for the purposes of legislation as "publication by any means of defamatory matter concerning the plaintiff". "Defamatory matter" is defined as "matter which is (a) untrue, and (b) tends to injure the plaintiff's reputation [...] in the eyes of reasonable members of the community". The burden of the proof, according to the Commission, should be on the plaintiff "to show that there was publication, that the matter contained in the publication was defamatory (which also means that its falsity must be established) and that the defamatory matter concerned the plaintiff". The Law Reform Commission also proposed not to consider an apology or offer of apology to the plaintiff as an admission of liability. In 1996 the Commission on the Newspaper Industry, set up by the Government, recommended "the desirability of changes in the libel laws". This Commission also analysed cases of inadvertent libel, caused by mistakes arising even if there was due care and no negligence, and proposed that the person involved should not be entitled to general damages if she or he did not suffer pecuniary loss as a result of the publication of this kind of libel.

43. The Special Rapporteur was also told that there is inadequate judicial control over the amount of damages which a jury may award for libel. In July 1999, the Supreme Court upheld an award of £Ir 300,000 to a politician, Mr. De Rossa, accused in a 1992 article by the Sunday Independent, to be linked with the Communist Party of the Soviet Union and other criminal activities. The Supreme Court also rejected the proposals that a proportionality standard should be applied to the size of the awards and that juries should be given specific instructions about the criteria they should apply in making such awards.[8] According to the NUJ, media organizations pay an estimated £Ir 8 million to 10 million per year in defamation costs. Most of the cases,

however, are settled financially before going to court. Now newspapers, in order to avoid defamation cases, train journalists to avoid libel and have lawyers on call 24 hours, in order to verify the absence of defamatory material in the newspaper before it is distributed.

44. It was reported to the Special Rapporteur that criminal libel is prosecuted very rarely. This is an offence which requires proof of a serious defamatory statement against a person and a prosecution can be brought against a newspaper only with the High Court authorization. This authorization is reportedly granted only very infrequently. The Law Reform Commission, in December 1991, recommended in its report on the crime of libel to retain the offence of defamatory libel but in a more confined form. In this regard, the Special Rapporteur welcomes the fact that the Supreme Court has recently declared blasphemous libel unconstitutional.[9]

45. However, the Special Rapporteur noted with concern that there is neither public nor political support for a change in the law on defamation. He was informed by various sources that the public generally does not have sympathy for newspapers in defamation cases and is not in favour of publication of private details. In particular, the Special Rapporteur was told that there is a debate under way as to how free speech and privacy should be balanced. This is particularly important as Irish people not only give a high value to personal reputation but "good name" is also mentioned in the Constitution.[10] Accordingly, some consider that newspapers should not publish information on private matters which have no effect on public life. Furthermore, there is allegedly a common perception that newspapers are powerful and possess considerable financial resources, and if a person is misrepresented in the media and has no money to go to Court, he or she has no other choice of recourse. A possible solution to this problem, suggested to the Special Rapporteur by various persons both at the official and unofficial level, would be the creation of a press ombudsman or a press council, funded by the media industry. It was also suggested that the Defamation Act should be reformed in order to allow a more simple process if, for instance, an apology or a redress is enough for the victim of the libel.

46. It was recently brought to the Special Rapporteur's attention that, after years of political inactivity on this issue notwithstanding the Law Reform Commission's recommendations, a new Defamation Bill is under preparation.

(iii) Section 31 of the Broadcasting Authority Act, 1960

47. The Special Rapporteur was informed that Section 31 of the Broadcasting Authority Act, 1960,[11] allows the Minister of Arts, Heritage, Gaeltacht and the Islands to order radio and television broadcasters not to broadcast any matter that is "likely to promote or incite to crime or which would tend to undermine the authority of the state." Section 31 was amended by Section 12 of the Radio and Television Act, 1988, to include local radio stations.

48. From 1971 to 1994, ministerial orders were made annually under this provision prohibiting interviews with spokespersons for unlawful organizations or for Sinn Fein, or election broadcasts on their behalf. This prohibition operates regardless of the content of the interview or broadcast. Since 1994, however, there has been no order in force under Section 31, but the Section remains valid.

49. In 1991 the European Commission of Human Rights declared inadmissible an application[12] brought by journalists and broadcasters challenging the Irish Government over Section 31 of the Broadcasting Authority Act on the grounds that the complaint was manifestly ill-founded. However, in 1993, the United Nations Human Rights Committee noted that "The prohibition of interviews with certain groups outside the borders by the broadcast media infringes upon the freedom to receive and impart information under article 19, paragraph 2, of the Covenant."[13]

50. With regard to this matter, the Special Rapporteur considers that public radio and television should be independent of the State and that legislation must exclude the possibility of State authorities influencing the programmes in such a way that would damage the balance, free expression and impartiality of information. He therefore welcomes suggestions made by various sources of amending the Act.

(iv) Official Secrets Act

51. The Official Secrets Act, 1963, places wide-ranging restrictions on access to government information and allows the State to prosecute unapproved revelations of sensitive government information. In 1985 a journalist was fined under the Official Secrets Act for having published information that was not authorized.[14]

52. Some sources told the Special Rapporteur that when the Freedom of Information Act was introduced, it was promised that it would overturn the presumption of secrecy established under the Official Secrets Act. In reality, public servants are allowed to disclose information, but only under the Freedom of Information Act. The Official Secrets Act can continue to be used in the case of disclosures of information to which the Freedom of Opinion Act does not apply, for example pre-April 1998 records or records of bodies not listed under the Freedom of Information Act.

(b) Right to seek and receive information

53. The right to freedom of opinion and expression includes the right to seek and receive information, which also means that citizens have the right to obtain information of public interest and have the right to inspect official documents. The Special Rapporteur noted with satisfaction that in Ireland the Freedom of Information Act, 1997, allows members of the general public to access information held by public bodies, to amend official information relating to them where it is incomplete, incorrect or misleading, and to obtain reasons for decisions affecting them. Various sources told the Special Rapporteur that this Act has worked reasonably well since it came into force on 21 April 1998, and reported a new culture of openness in many government departments and State agencies. The media, in particular, seems to make good use of the legislation.

54. The Freedom of Information Act, 1997, distinguishes between two types of official information: personal information and official records. An individual may gain access to his or her own personal information, no matter how old it is. It is possible also to access official information, with a few exceptions, to records held by government departments, local government authorities, health boards and a list of public bodies, created after the Act came into

force. Additional public bodies can be brought within the scope of the Act by Ministerial regulations. This Act also establishes an Information Commissioner office. If the public body refuses to give the information also following an appeal, the information seeker can appeal to the Information Commissioner. The Information Commissioner can demand access to all documents relating to an appeal and decide upon it. As the information has to be released if it is in the public interest, the Commissioner has also the power to decide what "public interest" is. Many sources reported to the Special Rapporteur that the current Information Commissioner, Mr. Kevin Murphy, who is also the Ombudsman, has been careful in ensuring that the broadest possible definition of public interest is used in applying the appeals system under the Act.

55. One concern brought up to the Special Rapporteur with regard to this Act was the exclusion for the time being of the Garda Siochána (the police force) from the scope of the Act. Some sources suggested that the Act, once it starts to work effectively, should cover the Garda Siochána, except for situations relating to national security. It was underlined that when the police are subject to public scrutiny, they generally become more accountable and effective. Another concern expressed to the Special Rapporteur referred to the lack of retrospective effect of the Act. Some sources also warned the Special Rapporteur of the possible danger that the Act may be restricted through amendment in cases where the Information Commissioner delivers some decisions with which the political forces may not agree, as has already happened in other countries.

(c) Women

56. A number of issues relating to women's right to freedom of opinion and expression in Ireland are of concern to the Special Rapporteur.

57. With regard to the right to seek and receive information, the Special Rapporteur was informed that, under Irish law, access to information in a number of areas which are primarily, but not exclusively, of concern to women is reportedly lacking.

58. Abortion is illegal in Ireland, except where the life of a woman is seriously at risk. In the past, this has meant that access to information about abortion services outside of Ireland has also been illegal. Access to information about abortion services outside of Ireland is now regulated by article 40.3.3 of the Constitution as amended by the Fourteenth Amendment to the Constitution Act 1992 and the Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995. The effect of the amendment was to guarantee women's freedom to obtain information, verbally or in print, which is likely to be required for the purposes of having a legal abortion in another State. However, the law restricts the available means and content of the information that may lawfully be provided. According to the Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995, information about pregnancy termination services cannot be distributed without solicitation by the recipient in books, newspapers, journals, magazines or other document, or cannot appear in a public notice or in a film or sound recording. Moreover, any information that may legally be provided must not advocate abortion.

59. The Act does not restrict information of a more general nature about abortion. However, all advocacy of abortion and advertisements for abortion are illegal pursuant to the Censorship of

Publications Act, 1929, which makes it illegal to print, publish or sell or otherwise distribute any book or publication which could reasonably be supposed to advocate the procurement of abortion or miscarriage by any method. The Special Rapporteur believes that as the right to freedom of opinion and expression includes the right to access information which may offend some members of the public (in this case being those who oppose abortion) there should not be any restriction on when and what kind of information regarding abortion is available to be accessed.

60. Concerns were expressed to the Special Rapporteur on the inadequate provision of information regarding health-care issues affecting women including medical conditions, available prognoses and treatment options. Furthermore, the Special Rapporteur was informed of a lack of information regarding childcare benefits and childcare options, as well as women's rights under the social welfare system. Concerns were expressed that in relation to the latter, the lack of information runs the risk of excluding women from social welfare services including job schemes. The Special Rapporteur was encouraged to learn of the availability of information, including legal and medical information, regarding rape and sexual assault issued by the Dublin Rape Crisis Centre. He believes that all women should have the possibility of accessing such information, particularly rural women, women asylum-seekers and women members of the Traveller community.

61. In addition to these concerns, the Special Rapporteur was informed that pregnancy information services, including counselling agencies, are currently unregulated in Ireland. Concerns were raised that the Government's failure to regulate these services means that women are at risk of receiving inaccurate and/or misleading information about these services and are open to being counselled by personnel without adequate training.

62. The under-representation of women in public life was also brought to the attention of the Special Rapporteur. He was informed that despite some increase in the proportion of women in politics at both local and national levels, the proportion of elected Members of Parliament who are women has been hovering around the 12 per cent mark for the past several elections. The Special Rapporteur noted that encouraging women to participate in the political arena as well as in public sector employment should be promoted in order that women may exercise their rights to freedom of opinion and expression in the same way as men.

63. A final concern noted by the Special Rapporteur is the lack of gender-specific information on the impact of government policies on women. Concerns were raised that the absence of gender-specific statistics has serious implications for the rights of women to access resources and to participate fully in society.

(d) Minorities

64. The Irish Travellers are an indigenous minority group of 25,000 people who have been living in Ireland for centuries and represent the largest minority in Ireland. For this reason, the Special Rapporteur wishes to concentrate on this specific ethnic minority and assess their access to the right to freedom of opinion and expression.

65. In this regard, the Special Rapporteur was informed that in the last 10 years there has been some progress on this issue in Ireland. There is a growing recognition of cultural diversity and Travellers are now starting to articulate their own concerns and interests in order to become more visible. A Platform against Racism, a coalition of non-governmental organizations committed to developing ways to combat racism and to promoting interculturalism, has been set up. Travellers' organizations also contribute to put Travellers' issues and anti-racism on the agendas of other organizations and projects, such as the Community Development Programme, youth and women's organizations. However, a lack of effective domestic anti-discrimination legislation and the fact that Ireland has not ratified yet the International Convention on the Elimination of All Forms of Racial Discrimination makes it difficult for non-governmental organizations to work effectively on these issues. The Special Rapporteur was told that of the existing legislation concerning these issues, the Employment Equality Act, 1998, outlaws job discrimination against Travellers and that the Prohibition of Incitement to Hatred Act, 1991, needs to be more effective and therefore reviewed accordingly. The Government also established a monitoring committee to supervise the implementation of key recommendations of the 1995 Task Force Report on the Travellers.

66. It was also reported to the Special Rapporteur that Travellers are often represented by the media only in specific minority-related roles, and rarely as integrated and active participants of society. In particular, sometimes local newspapers and radios reportedly feature anti-Traveller declarations, often by quoting local politicians or members of the Garda making a discriminatory comment on Travellers. The Commission on the Newspaper Industry noted in its June 1996 report that "concern does exist with particular reference to the question of the treatment of minority groups such as Travellers". The Special Rapporteur was informed that the National Union of Journalists has agreed to some guidelines for all its members to follow when dealing with race relations subjects. With reference to Travellers, the criteria are to "only mention the word Gypsy or Traveller if strictly relevant or accurate" and to "strive to promote the realization that the Travellers' community is comprised of full citizens of Great Britain and Ireland whose civil rights are seldom adequately vindicated, and who often suffer much hurt and damage through misuse by the media".

(e) Refugees and migrants

67. The arrival of refugees and asylum-seekers in Ireland is a recent phenomenon and, even if the numbers are low compared to other European countries, the Special Rapporteur was informed that this is becoming an issue of major concern in the country. According to government statistics, 5,497 persons applied for asylum between January and October 1999 compared with 424 for the whole of 1995. The Refugee Act, 1996, which was amended in 1999, regulates procedural aspects of the Refugee Status Determination process and the Department of Justice, Equality and Law Reform processes all requests for asylum. An appeal against a decision to refuse refugee status is determined by an Appeal Authority appointed by the Minister for Justice, Equality and Law Reform for this specific purpose. In this regard, it was suggested to the Special Rapporteur that it would be more proper if an independent authority, such as the Ombudsman or an independent refugee commissioner, could review such decisions.

68. The Special Rapporteur's attention was drawn to the fact that the Irish media sometimes, especially in the past few years, contributed to intensify the prejudices of the Irish population

against refugees and asylum-seekers. In fact, the Special Rapporteur was told that, especially in 1997, the media coverage of the refugees often criminalized and demonized them, labelling them as frauds, who were "economic migrants" stealing jobs and houses from Irish people. However, according to information received by the Special Rapporteur, the media are now trying to have a more constructive approach to this issue. For instance, he was told, RTÉ is reportedly trying to cover refugees and asylum-seekers in a balanced way, by adopting a tolerant and welcoming approach. RTÉ is also legally bound to broadcast the opposite point of view, but it is careful to avoid hate speeches.

69. The Special Rapporteur noted with appreciation the activities of Calypso Productions, a theatre and production company, which uses inventive drama to explore human rights, social justice, inclusion and development. Every year, since 1993, Calypso Productions has organized a theatrical production in conjunction with education programmes (education packs, workshops and seminars with schools and community groups) to build awareness and promote debate on the issues in question (for 1997 it was racism, for 1998 refugees and asylum-seekers). The Special Rapporteur would like to praise this kind of activities for giving a voice to marginalized groups and to propose it as an example to be followed in other countries.

III. CONCLUDING OBSERVATIONS

70. The Special Rapporteur welcomes the expressed commitment of the Government of Ireland to democracy, the rule of law and human rights, in particular the right to freedom of opinion and expression.

71. The Special Rapporteur notes that, although Ireland has not incorporated yet in its law the European Convention for the Protection of Human Rights and Fundamental Freedoms and the fact that the ratified international agreements are not self-executing, it respects international standards in the field of human rights, particularly the legal guarantees offered for the right to freedom of opinion and expression. In this context, he welcomes the role played by the Supreme Court in keeping the legislation concerning this right up to date, and in line with modern times and challenges. He also welcomes the fact that the establishment of a Human Rights Commission is under way.

72. Furthermore, the Special Rapporteur can assert that freedom of opinion and expression is widely apparent in Ireland. He notes with satisfaction that there is a plurality of viewpoints and voices and that the State-owned television, RTÉ, appears fair and impartial, reporting all aspects of national life and providing a diversity of viewpoints. Also laws governing the registration of media and the allocation of broadcasting seem clear and balanced.

73. However, the Special Rapporteur is concerned at the use and implementation of certain laws to restrict the right to freedom of opinion and expression. With reference to Section 31 of the Broadcasting Authority Act, he is of the view that no restriction should be imposed unless it has been demonstrated that the restriction is necessary to protect a legitimate national security interest. He is also concerned at the negative effects produced by libel and defamation suits which, in extreme cases, may create a climate of "libel chill". Writers, editors and publishers may become increasingly reluctant to report and publish matters of public interest because of the large costs of defending such actions and the big awards granted in these cases. This creates a

restraint on the freedom of expression, access to information and the free exchange of ideas. He welcomes the fact that, although censorship exists, it is now seldom implemented, but he expresses concern about the secrecy surrounding the decision-making procedure. The Special Rapporteur would therefore like to emphasize his view that the right to freedom of expression should not be restricted by indirect methods or means.

74. The Special Rapporteur notes that the protection of sources assumes primary importance for journalists, because a lack of this guarantee may create obstacles to journalists' right to seek and receive information, as sources will no longer disclose information on matters of public interest. Any compulsion to reveal sources should therefore be limited to exceptional circumstances where a vital public or individual interest is at stake. The Special Rapporteur welcomes the trend to resolve in favour of freedom of information the conflicts in the law affecting the right of journalists to protect their sources.

75. The Special Rapporteur welcomes the introduction of the Freedom of Information Act, 1997, and believes that the law has been working reasonably well since it came into force in April 1998. He is of the view that a democracy can only work if the citizens and their elected representatives are fully informed. Therefore, with the exception of a few types of documents, it is desirable to make government documents public in order to allow the citizen to know how public funds are disbursed. Thus, the Special Rapporteur notes that it is indispensable that journalists should have access to information held by public authorities, granted on an equitable and impartial basis, so they can carry out their role as a watchdog in a democratic society.

76. He notes with satisfaction that the Working Group on the Illegal and Harmful Use of the Internet recommended an approach of non-intervention of the State. The Special Rapporteur wishes to reiterate his opinion that the new information technologies, in particular Internet, are inherently democratic and provide individuals with access to unmatched information and sources. He believes that the tendency of Governments to consider regulation rather than enhancement of access to the Internet is to be strongly checked and, therefore, he appreciates that Ireland has opted for a self-regulatory approach. The Special Rapporteur wishes to point out that the new challenge presented by Internet is rather how to fully integrate Internet in a process which benefits all equally.

77. The Special Rapporteur notes with appreciation the efforts undertaken by the Government of Ireland to encourage the participation of women in the political arena as well as in the public sector. However, he notes that additional efforts should be undertaken as, for instance, the proportion of elected members of the Oireachtas who are women decreased after the last election. He welcomes the efforts made by media to highlight women's issues by also proposing public awareness campaigns on various forms of violence against women. The Special Rapporteur remains convinced that these campaigns are essential in order to break the silence and taboos surrounding violence and in order to reach those women, in particular members of the Traveller community, women refugees and those living in rural areas, who do not appear to seek help from crisis services or police, because of ignorance, fear or shame. He also believes that it is particularly important that all women have the right to access all information, including information regarding abortion in an easier manner, and he feels that women members of marginalized groups do not have the same degree of acccess as women from other socio-economic groups.

78. The Special Rapporteur welcomes the positive measures taken by the Government of Ireland to promote and guarantee the right to freedom of opinion and expression of refugees and minorities. He also welcomes the guidelines adopted by the National Union of Journalists when dealing with race relations subjects. However, he notes that additional efforts should be undertaken in order to make Irish journalists sensitive to the needs of refugees.

79. Finally, the Special Rapporteur considers that in general the Irish experience in the field of freedom of opinion and expression could be of value for countries in the process of profound economic and social transition, and that it would be useful if Ireland could build up constructive cooperation with these countries.

IV. RECOMMENDATIONS

80. On the basis of the principal observations and concerns set out in the previous section, the Special Rapporteur would like to offer the following recommendations for consideration by the Government. In view of the open and constructive exchanges of views that took place during his visit, the Special Rapporteur is convinced that these recommendations will be received in a spirit of shared commitment to strengthening the promotion and protection of the right to freedom of opinion and expression.

81. The Special Rapporteur encourages the Government of Ireland to consider ratifying the International Convention against All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and to fully incorporate or reflect in the domestic legislation the international human rights treaties already ratified.

82. The Special Rapporteur welcomes the future establishment of a Human Rights Commission and wishes to assert that in order for this institution to work in an independent and effective manner it should be guaranteed adequate human and financial resources.

83. The Special Rapporteur recommends that journalists should not be compelled to reveal their sources except in the most limited and clearly defined circumstances in order not to compromise the media's access to information and its ability to communicate important information to the public.

84. The Special Rapporteur encourages the preparation of a new Defamation Bill. He is of the view that the onus of proof of all elements should be on those claiming to have been defamed rather than on the defendant and where the truth is an issue, the burden of proof should lie with the plaintiff. Furthermore, sanctions for defamation should not be so large as to exert a chilling effect on the freedom of opinion and expression and the right to seek, receive and impart information. A range of remedies should also be available, including apology and/or correction. The Special Rapporteur reminds that restrictions on the right to freedom of expression must be limited only to those permissible under article 19 of the International Covenant on Civil and Political Rights.

85. In this regard, the Special Rapporteur also recommends the establishment of an independent press ombudsman, whose functions would be to receive and adjudicate upon complaints against newspapers. The press ombudsman should be granted immunity from action by way of statutory privilege in respect of statements made in the course of his or her duties.

86. Furthermore, the Special Rapporteur urges the Government of Ireland to consider amending Section 31 of the Broadcasting Authority Act, in line with the concerns expressed in 1993 by the United Nations Human Rights Committee. He wishes to reiterate the fact that legislation must exclude the possibility of State authorities influencing the programmes in such a way that would damage the balance, free expression and impartiality of information.

87. The Special Rapporteur urges the Government to consider reviewing or even repealing the laws concerning the censorship of publication and of films and videos. In this regard, he agrees with the 1993 recommendation of the Human Rights Committee "that steps should be taken to repeal strict laws on censorship and ensure judicial review of decisions taken by the Censorship on Publications Board". The Special Rapporteur also recommends that the Censorship of Publications Board operate in public and make its decisions open to public scrutiny.

88. The Special Rapporteur welcomes the introduction of the Freedom of Information Act, 1997, and the work done until now by the Information Commissioner. He also invites the Government of Ireland to consider expanding the scope of the Act, for instance, by including the police force, and to continue its support to the Office of the Information Commissioner with human and financial resources in order to guarantee its independence and effectiveness.

89. With regard to new information technologies, in particular Internet, the Special Rapporteur notes with appreciation the approach of non-intervention of the State. He wishes to encourage the Information Society Commission to continue looking into the issue of social inclusion in order to set up strategies to improve the access of marginalized groups to new information technologies.

90. The Special Rapporteur recommends the adoption and implementation of the Equal Status Bill, 1999, in order to provide for temporary special measures to overcome systemic and indirect discrimination against women and members of the Traveller community. He suggests awareness-raising and educational measures to redress cultural stereotypes for marginalized groups. In particular the Special Rapporteur would encourage the Government and the NGO community to use the media to improve the image of the Travellers and refugees in Ireland.

Notes

[1] The Court of Criminal Appeal in In re O'Kelly (1974) stated that it was acceptable that journalists normally considered themselves under an obligation not to disclose confidential sources of information, but said that it remained the courts' functions to decide whether a witness should be required to answer a specific question.

[2] Contempt of Court Act 1981, Section 10: "No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which he is responsible, unless it be established to the satisfaction of the court that disclosure is necessary in the interest of justice or national security or for the prevention of disorder or crime."

[3] Goodwin v. the United Kingdom (16/1994/463/544), judgement adopted on 22 February 1996.

[4] Convention for the Protection of Human Rights and Fundamental Freedoms, article 10: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

[5] Coughlan v. RTÉ (1998).

[6] CCPR/C/79/Add.21, paragraph 21, 3 August 1993.

[7] Section 7 (2) of the Censorship of Films (Amendment) Act, 1992: "... unfit for general exhibition in public by reason of its being indecent, obscene or blasphemous or because the exhibition thereof in public would tend to inculcate principles contrary to public morality or would be otherwise subversive of public morality".

[8] De Rossa v. Independent Newspapers (1999). Also, the European Court for Human Rights decided in Tolstoy Miloslavsky v. the United Kingdom (8/1994/455/536), whose judgement was adopted on 23 June 1995, that "... having regard to the size of the award in the applicant's case in conjunction with the lack of adequate and effective safeguards at the relevant time against a disproportionately large award, the Court finds that there has been a violation of the applicant's rights under Article 10 (art. 10) of the Convention".

[9] Corway v. Independent Newspapers (1999).

[10] Article 40.3.2: "The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen".

[11] Section 31 of the Broadcasting Authority Act, 1960 on Directions by Ministers: "The Minister may direct the Authority in writing to refrain from broadcasting any particular matter or matter of any particular class, and the Authority shall comply with the direction ...".

[12] Purcell v. Ireland (1991).

[13] CCPR/C/79/Add.21, paragraph 15, 3 August 1993.

[14] DPP v. Independent Newspapers (1985).

Annex

PERSONS WITH WHOM THE SPECIAL RAPPORTEUR MET DURING HIS VISIT

Officials

Mr. John O'Donoghue, Minister for Justice, Equality and Law Reform; Ms. Sile de Valera, Minister for Arts, Heritage, Gaeltacht and the Islands, Mr. Michael Mc Dowell, Attorney-General, Ms. Liz O'Donnell, Minister of State with special responsibility for Overseas Development Assistance and Human Rights, Department of Foreign Affairs, Ms. Justice Susan Denham, Judge of the Supreme Court, Mr. Eoin Ryan, Member of Parliament, Chairperson of the Justice, Equality and Women's Rights Committee; Ms. Monica Barnes, Member of Parliament, Vice-chairperson of the Justice, Equality and Women's Rights Committee, Mr. Jim Higgins, Member of Parliament, Justice, Equality and Women's Rights Committee; Mr. John Rowan, Head of Human Rights Unit, Department of Foreign Affairs; Mr. Fergal Mythen, First Secretary, Human Rights Unit, Department of Foreign Affairs; Mr. John Haskins, Project Development Division, Department of Justice, Equality and Law Reform; Ms. Audrey Conlon, Deputy Film Censor, Film Censor's Office; Mr. Pat Whelan, Director of the Office of the Information Commissioner, Mr. Mike Neary, Director of Information Society Commission, Ms. Brenda Boylan, Information Society Commission, Mr. Arthur F. Plunkett, Commissioner, Law Reform Commission, Prof. David Glynmorgan, Director of Research, Law Reform Commission, Mr. James Ridge, Chairman of Censorship of Publications Board; Mr. Conor Maguire, Chairperson of the Independent Radio and Television Commission, Ms. Celene Craig, Secretary of the Independent Radio and Television Commission.

Professionals of the media

Mr. Bob Collins, Director-General of Radio Telefís Eireann; Mr. Ronan Brady, Cathaoirleach of the Irish Executive Council of the National Union of Journalists (NUJ), Mr. Tony Jones, Senior Sub-editor, daily Irish Independent; Mr. Ronan Quinlan, Editor, Irish Journalist; Mr. Seamus Dooley, Irish organizer of the NUJ; Mr. Paul Gillespie, Foreign Editor, The Irish Times.

Academics

Ms. Marie McGonagle, Lecturer in Law, University of Galway; Dr. Diarmuid Rossa Phelan, Lecturer in Law, Trinity College; Ms. Maeve McDonagh, Lecturer in Law, University College Cork; Mr. John O'Dowd, Lecturer in Law, University College Dublin.

Non-governmental organizations

Dr. Valerie Bresnihan, Chairperson of the Irish Penal Reform Trust Ltd.; Sr. Brigid Reynolds, Director of Justice Office, Conference of Religious of Ireland; Fr. Sean Healy, Conference of Religious of Ireland; Ms. Olive Braiden, Director of the Dublin Rape Crisis Centre; Mr. Christopher Robson, Gay and Lesbian Equality Network; Women's Committee, Irish Council for Civil Liberties; Mr. Martin Collins, Pavee Point Travellers' Centre; Ms. Maria Flemming, Calypso Production.

Writers

Mr. Tim Pat Coogan.